LEGAL MISCELLANY.

"A VERDICT DOES NOT BEAR INTEREST PRIOR TO THE ENTRY OF JUDGMENT."

KELSEY *vs.* MURPHY, 6 *Casey*, 340.

One who never heard of this case before he read it in the Reports, desires to offer some observations upon the principles therein laid down. A verdict was rendered for the plaintiff in December, 1851, and motions in arrest of judgment and for a new trial were made, which were overruled, and judgment entered on the verdict in November, 1852. The Supreme Court of Pennsylvania decided that no interest could be allowed upon the verdict, for the time intermediate between its rendition and the entry of the judgment. Is this right? Does it rest on sound principle? Is it law?

The *principle* which underlies all legislation and all judicial decision upon the subject is, that he who detains a debt which he owes to another, beyond the time fixed in the contract, or inferred from custom or usage, for its payment, is guilty of a wrong for which he is justly bound to make compensation; and the legislature determined the amount of compensation when they fixed the rate of interest. It is difficult to conceive any thing more just and equitable than this. While the debtor detains the money and makes profit out of it, the creditor is deprived of the opportunity of doing so, and nothing short of compelling the debtor to hand over the interest he has made, to the creditor who has been prevented making it, can do complete justice between the parties. If this principle be correct, the debtor should make compensation *for the whole time* during which he detains and makes profit out of the money of the creditor. No act of his, interposing delay by motions in arrest of judgment or for new trial, should be allowed to benefit him who is found to have been in the wrong from the first. No greater encouragement to litigation could be given, than to allow a litigious defendant to profit by all the delays and obstacles he can interpose to the payment of his debts. Such is not the notion of justice that

pervades the legal or the general mind. *Interest* is always given as *damages* for the delay in payment of a *just debt*. The law, for wise purposes, has fixed an uniform measure of damages in such cases, as the injury to the creditor is alike in all. No *principle* exists which can warrant the *suspension* of those damages, which are in their nature *continuous*, until the debt be paid. To do so is to prevent justice, and give to the wrong-doer a premium for his wrong.

The Supreme Court say, "While the question of indebtedness, under all the ascertained facts in the case, is under consideration in the courts, as is the case on a motion for a new trial, *the contract of the debtor is suspended.*" If by this last expression it is meant to convey the idea that the creditor has no means to enforce payment of the debt until the suit is determined—and it is fair to infer that nothing more was intended—then it is difficult to perceive any reason for denying interest in the meantime, that would not also deny it from the commencement of the suit. The whole time from the beginning to the end of the suit, may just as well be set down to the account of the "law's delay," as that between the verdict and judgment. But who ever before, *on* or *off* the *bench*, ventured to suggest the heretical doctrine that the "law's delay," interposed by an obstinate debtor to the payment of a debt found to be justly due to his creditor, was to be atoned for by the creditor who is in no default by the loss of interest? This would indeed be to pervert justice, and bring its administration into contempt. Every suit is presumed to be commenced, prosecuted and defended for the purpose of determining which party is right, and which is wrong, as to the question involved, and whoever shall be found to be in the wrong must bear the expense of the litigation. The "law's delay" is a sufficiently grievous infliction upon him who is right, attended, as it is by the expense of his own counsel, without requiring him to leave his funds, unproductive to himself, in the hands of the wrong-doer, for *him* to make profit of, and thereby enable him more vigorously to defend himself against the payment of a just debt. The final determination of the suit is that the plaintiff is entitled to recover, and was so entitled when it was

commenced; and that the defendant was always wrong in refusing to pay. The "law's delay" is wholly chargeable to the defendant. The plaintiff should have interest for the whole time, from the maturity of the debt until payment; and nothing short of this will consist with justice.

How stands the question upon authority? Interest is allowed upon obligations for the payment of money, of every sort, from the maturity thereof until payment. It is allowed upon all settled accounts, from the time they are settled and the balance ascertained. It is allowed on all unsettled accounts, in the discretion of the jury, from the time when they ought to have been settled and the money paid. It is allowed on awards of referees, whether parol or in writing, from the time of the award. *Jones* vs. *Ringold*, 1 Yeates, 480; *Buckman* vs. *Davis*, 4 Casey, 215. In this last case, considerable time elapsed between the award and the judgment entered thereon; and the court allowed interest in the meantime, on the same principle as interest is allowed *on a verdict*. *Buckman* vs. *Davis* does not seem to have been brought to the notice of the court in *Kelsey* vs. *Murphy*. Interest was allowed on a *verdict*, until judgment, *after* which no question was raised, in *Vredenburg* vs. *Hallett*, 1 Johns. Cas. 27; in *The People* vs. *Gairn*, 1 Johns. Rep. 343; and in *Lord* vs. *The Mayor, &c. of New York*, 3 Hill, 430; and in *Ball* vs. *Ketchum*, 2 Denio, 188, the same principle was recognized. There seems to be no exception to this rule where the delay in entering judgment is caused by the defendant. There would seem, thus, to be *authority* sufficient upon which to rest a decision, the opposite of that announced in *Kelsey* vs. *Murphy*, and in accordance with the *principle* already enunciated. Indeed it appears difficult, upon any well ascertained theory of right and justice, to conceive how any one could arrive at so unsatisfactory a conclusion as the Supreme Court have done. The jury can ascertain the amount due only to the rendition of the verdict, and cannot safely compute interest to a later period, for they cannot know when judgment will be entered. All subsequent delays at the instance of the defendant must be at the expense of interest on the ascertained debt from that time. The *manner of arriving at it* is

of less importance, whether by taxing the interest between the verdict and judgment, with the costs, as is the practice in New York; or by computing it from the verdict, and recovering it with the judgment, as in Pennsylvania; or by entering the judgment as of the date of the verdict, *nunc pro tunc*, as might readily be done—still the *principle* should be steadily maintained, to allow the creditor interest for delay of payment of his debt from the time its amount is fixed and ascertained by the verdict, until it is paid.

D.

NOTICES OF NEW BOOKS.

VISITATION AND SEARCH; or an Historical Sketch of the British Claim to exercise a Maritime Police over the vessels of all Nations, in peace as well as in war. With an inquiry into the expediency of terminating the Eighth Article of the Ashburton Treaty. By WILLIAM BEACH LAWRENCE, Editor of "Wheaton's Elements of International Law." Boston: Little, Brown and Company, 1858.

The importance attached by this country to maritime rights makes any inquiry into their application highly interesting. Hence, this historical sketch with regard to the right of visitation and search cannot fail to attract readers. The author is well known to jurisconsults as the editor of Wheaton's Elements of International Law, and has enjoyed special opportunities for becoming familiar with the maritime police that is exercised over ships.

The exposition of international law presented by this government, and admitted by Lord Stowell and Lord Lyndhurst, has definitely settled the independence of our flag, on the part of the greatest maritime power of Europe, and the subject has since become matter of history. No where will the reader find the past and present history of a once exceedingly vexed question more fully discussed, or more luminously treated than is the well written pages of Mr. Lawrence's small volume, and very modest volume.

It is not unworthy of remark as showing how comprehensive the newspaper press is, that the first suggestions of Mr. Lawrence's Essay were printed with much success in the Newport Advertiser. It has been reserved for our times to print grave discussions upon vital questions of international maritime law in the columns of a newspaper, which addresses itself to readers of all classes, law and lay, and that such discussions having been thus brought before his countrymen, the author finds himself required to cast his views into the shape of an essay. It is certain that the information contained in these 208 pages is not easily found elsewhere, and a valuable contribution has been added to our history of International Law.